

Peter S. Schweda
Waldo, Schweda & Montgomery, P.S.
2206 North Pines Road
Spokane, WA 99206
509/924-3686
Fax: 509/922-2196
pschweda@wsmattorneys.com

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,)	
)	No. 4:15-cr-6049-EFS-16
Plaintiff,)	
)	MOTION TO CONTINUE ON
vs.)	DEFENDANT EDGAR OMAR
)	HERRERA FARIAS' MOTION
EDGAR OMAR HERRERA FARIAS,)	SUPPRESS ECF NO 614
)	Hearing: March 6, 2018 at 9:30
Defendant.)	A.M. at Richland
)	

The Defendant, Edgar Omar Herrera Farias, by his appointed counsel, moves the Court for an order continuing the hearing of The Defendant's Motion to Suppress, ECF No. 614 until the date of the next pre-trial conference.

Until March 1, 2018 the discovery provided by the Government has not included any discovery pertaining to the subject search and seizure of evidence at the Defendant's home on March 22, 2012. The Application for the search warrant and the Search Warrants attached to ECF No. 614 were independently obtained through the investigation by the Defendant. On March 1, 2018, the Government provided

1 discovery disclosure No. 22, which includes the attachments to ECF No. 614 and also
2 other discovery that has not been in the possession of the undersigned prior to March
3 1, 2018. Discovery Disclosure No. 22 includes 956 pages. Due to hearing and a trial
4 on March 2, 2018 on the other matters, the undersigned was not able to start reviewing
5 the discovery until March 4, 2018. More time is needed to review these materials to
6 prepare for the motion hearing. The materials include forensic analysis of three
7 cellular phones that were seized from three of the four search locations on March 12,
8 2012. No additional search warrant was obtained to search data on the phones. One
9 cell phone was seized from the home of Mr. Herrera Farias. It is unknown which
10 forensic analysis of the cellular phone that has been presented in discovery pertains
11 to the phone seized from Mr. Herrera Farias' home.
12
13
14
15

16 Ninth Circuit case law recognizes that “electronic devises could contain vast
17 quantities of intermingled information, raising the risks inherent in over-seizing data,”
18 and therefore, “law enforcement and judicial officers must be especially cognizant of
19 privacy risks when drafting and executing search warrants for electronic evidence.”
20 *United States v. Schesso*, 730 F.3d 1040, 1042 (9th Cir. 2013). Searches of electronic
21 records pose unique challenges for “striking the right balance between the
22 government’s interest in law enforcement and the right of individuals to be free from
23 unreasonable searches and seizures.” *United States v. Comprehensive Drug Testing,*
24 *Inc.*, 621 F.3d 1162, 1177 (9th Cir. 2010) (en banc). Therefore, additional time is
25
26

1 necessary to research the search of phone data.

2 Further, on February 28, 2018, the Government filed a Federal Rule of
3 Evidence 609 Notice that it intends to use Mr. Herrera Farias' prior conviction
4 resulting from controlled substances seized on March 22, 2012 as impeachment
5 evidence if the Defendant testifies at trial. This Notice presents unique issues since
6 the Government's theory is that the seizure of controlled substances and firearms on
7 March 22, 2012 are acts in furtherance of the charged conspiracy.
8

9 The Defendant intends to object to the FRE 609 Notice pre-trial. It is requested
10 that the Court hear both the Motion to Suppress and the Objection to the FRE 609
11 Notice at the same time.
12

13 The undersigned has discussed this Motion with AUSA Caitlin Baunsgard who
14 stated the Government does not take position on the Motion but will be ready to
15 present evidence on the Motion to Suppress on March 6, 2018 at the scheduled
16 hearing. No other defendant has standing on the Motion to Suppress in ECF No. 614.
17

18
19 RESPECTFULLY submitted this 5th day of March 2018.
20

21
22 WALDO, SCHWEDA
23 & MONTGOMERY, P.S.
24 By: /s/ Peter S. Schweda
25 PETER S. SCHWEDA
26 Attorney for Defendant Herrera Farias

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 5, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

Joseph H. Harrington
Acting United States Attorney
Eastern District of Washington
Stephanie Van Marter
Caitlin Baunsgard
Assistant United States Attorney
Eastern District of Washington
300 United States Courthouse
PO Box 1494
Spokane, WA 99210

By: /s/ KATHLEEN SCHROEDER
Legal Assistant to Peter S. Schweda